

Appendix A

The Law of the River

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The Secretary of the Interior (Secretary) is vested with the responsibility to manage the mainstream waters of the lower Colorado River (LCR) pursuant to a body of law commonly referred to as the “Law of the River.” The Law of the River includes, but is not limited to, Federal and state laws, interstate compacts, an international treaty, court decisions, Federal contracts, Federal and state regulations, and multi-party agreements. Selected documents that comprise the Law of the River are discussed below, and a more comprehensive list is included in Table A-1. Inclusion of information in this Appendix A is for informational purposes only. The descriptions of the elements of the Law of the River presented in this Appendix are not intended to represent an interpretation of these legal documents or represent the legal position of any of the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) participants.

A.1 Colorado River Compact of 1922 (Compact)

The 1922 Compact divided the Colorado River into the Upper Basin and the Lower Basin. The drainage basin of the Colorado River within the United States is shown on Figure A-1. The Upper Basin includes those portions of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters drain naturally into the Colorado River above Lee Ferry, Arizona. The Lower Basin consists of those portions of Arizona, California, Nevada, New Mexico, and Utah within and from which waters drain naturally into the Colorado River system below Lee Ferry. The Compact apportioned to each basin, in perpetuity, the exclusive beneficial consumptive use of 7.5 million acre-feet per year (mafy). The Compact also divided the seven Colorado River Basin states into the Upper Division and Lower Division states. The Upper Division states are Colorado, New Mexico, Utah, and Wyoming. The Lower Division states are Arizona, California, and Nevada. The Upper and Lower Basins share any obligation to Mexico (if water above that apportioned for the United States is not available for that purpose).

A.2 Boulder Canyon Project Act of 1928

In 1928, Congress enacted the Boulder Canyon Project Act of 1928 (BCPA) (45 Stat. 1057), which authorized the Secretary to construct Hoover Dam and the All-American Canal (AAC), and to contract for the delivery and use of water from these facilities for irrigation and domestic uses. Congress conditioned the BCPA upon the ratification of the Compact by at least six of the Colorado River Basin states, including California.

The BCPA authorized the states of Arizona, California and Nevada to enter into a compact to annually apportion the waters of the Lower Colorado River as follows: Nevada would be entitled to 0.3 million acre-feet (maf) plus 4% of any surplus flow, Arizona 2.8 maf plus 46% of any surplus flow, and California 4.4 maf plus 50% of any surplus flow. Although the states never entered into a compact, the decision in *Arizona v. California* affirmed Congress' intent to apportion the waters of the Colorado River in this manner. The BCPA also required that California unconditionally limit its right to Colorado River water as stated above. In 1929, the California legislature adopted this apportionment by passing the California Limitation Act.

Section 5 of the BCPA authorizes the Secretary to contract with entities and individuals in the Lower Division states (including the states themselves) for delivery of Colorado River water. These contracts are generally referred to as "section 5 water delivery contracts," and are for permanent service.

Table A-1. Selected Documents Included in the Law of the River

The River and Harbors Act, March 3, 1899
The Reclamation Act of June 17, 1902
Reclamation of Indian Lands in Yuma, Colorado River, and Pyramid Lake Indian Reservations Act of April 21, 1904
Yuma Project authorized by the Secretary of the Interior on May 10, 1904, pursuant to section 4 of the Reclamation Act of June 17, 1902
Protection of Property Along the Colorado River Act of June 25, 1910
Warren Act of February 21, 1911
Patents and Water-Right Certificates Acts of August 9, 1912 and August 26, 1912
Yuma Auxiliary Project Act of January 25, 1917
Availability of Money for Yuma Auxiliary Project Act of February 11, 1918
Sale of Water for Miscellaneous Purposes Act of February 25, 1920
Federal Power Act of June 10, 1920
The Colorado River Compact, 1922
The Colorado River Front Work and Levee System Acts of March 3, 1925, June 21, 1927, June 28, 1946
The Boulder Canyon Project Act of December 21, 1928
The California Limitation Act of March 4, 1929
The California Seven Party Agreement of August 18, 1931
The Rivers and Harbors Act of August 30, 1935
The Parker and Grand Coulee Dams Authorization Act of August 30, 1935
The Parker Dam Power Project Appropriation Act of May 2, 1939
The Reclamation Project Act of August 4, 1939
The Boulder Canyon Project Adjustment Act of July 19, 1940
The Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande—Treaty between the United States of America and Mexico, February 3, 1944 (1944 Water Treaty)

The Flood Control Act of December 22, 1944
 Gila Project Act of July 30, 1947
 The Upper Colorado River Basin Compact of October 11, 1948
 Consolidated Parker Dam Power Project and Davis Dam Project Act of May 28, 1954
 43 C.F.R. Part 414
 43 C.F.R. Part 417
 Palo Verde Diversion Dam Act of August 31, 1954
 Change Boundaries, Yuma Auxiliary Project Act of February 15, 1956
 The Colorado River Storage Project Act of April 11, 1956
 Water Supply Act of July 3, 1958
 Boulder City Act of September 2, 1958
 Report of the Special Master, Simon H. Rifkind, *Arizona v. California*, et al., December 5, 1960
 United States Supreme Court Decree, *Arizona v. California*, March 9, 1964
 International Flood Control Measures, Lower Colorado River Act of August 10, 1964
 Minutes 218, March 22, 1965; 241, July 14, 1972, (replaced 218); and 242, August 30, 1973, (replaced 241) of the
 United States Section, International Boundary and Water Commission, pursuant to the 1944 Water Treaty
 Southern Nevada (Robert B. Griffith) Water Project Act of October 22, 1965
 The Colorado River Basin Project Act of September 30, 1968
 Criteria for the Coordinated Long Range Operation of Colorado River Reservoirs, June 8, 1970
 Supplemental Irrigation Facilities, Yuma Division Act of September 25, 1970
 The Colorado River Basin Salinity Control Act of June 24, 1974, as amended
 United States Supreme Court Supplemental Decrees, *Arizona v. California*, January 9, 1979, April 16, 1984, and
 June 19, 2000
 Hoover Powerplant Act of August 17, 1984 (98 Stat. 1333)
 The Numerous Colorado River Water Delivery and Project Repayment Contracts with the States of Arizona and
 Nevada, cities, water districts, and individuals
 Hoover and Parker-Davis Power Marketing Contracts
 Reclamation Reform Act of 1982
 Colorado River Floodway Protection Act of 1986
 The Grand Canyon Protection Act of 1992 (Public Law 102-575, 106 stat. 4669)
 The Reclamation States Emergency Drought Relief Act of March 5, 1992, as extended by the Act of
 January 24, 2000
 The Interim Surplus Guidelines Record of Decision, effective February 25, 2001 (66 FR 7772 (January 25, 2001))
 Colorado River Water Delivery Agreement of October 10, 2003 (69 FR 12202–12215 (March 15, 2004))

A.3 California Seven Party Agreement of 1931 (Seven Party Agreement)

Prior to entering into section 5 water delivery contracts with California agencies, the Secretary requested that those agencies recommend to the Secretary an apportionment of the California share of Colorado River water among California water users. In response, seven major California entities executed the Seven Party Agreement, in which the California entities agreed to an apportionment of California's share of Colorado River water and agreed to priorities among the seven parties, and recommended the adoption of such by the Secretary. The terms of the Seven Party Agreement were incorporated into the Secretarial regulations dated September 29, 1931 and into the section 5 water delivery contracts with the Secretary, thereby placing the recommended apportionment into effect. The amount of Colorado River water apportioned under the Seven Party Agreement totals 5.362 mafy, or 0.962 mafy more than California's 4.4-maf apportionment in a normal year. Therefore, diversions of more than 4.4 maf under Priorities 5a, 5b, and 6 in any given year are dependent upon the following conditions: surplus water is available; Arizona and/or Nevada do not divert their full apportionments; less than 4.4 maf/yr is used within California by entities with higher priorities; or entities with Priorities 1 through 3 and Present Perfected Rights (PPRs) take less than 3.85 mafy. (PPRs are defined under the discussion of *Arizona v. California* below). Delivery of Colorado River water within California is also controlled by the applicable provisions of the Colorado River Water Delivery Agreement, during the Agreement's effective period.

A.4 1944 Water Treaty

Under Article 10(a) of the *Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande—Treaty between the United States of America and Mexico* dated February 3, 1944, (1944 Water Treaty) Mexico is entitled to an annual amount of 1.5 maf of Colorado River water. Under Article 10(b) of the 1944 Water Treaty, Mexico may schedule up to an additional 0.2 maf when "there exists a surplus of waters of the Colorado River in excess of the amount necessary to satisfy uses in the United States." This delivery is additional to the 7.5 maf allocated to the two basins. The 1944 Water Treaty also addresses delivery of water to Mexico in an amount less than 1.5 maf in the event of extraordinary drought or serious accident to the irrigation system in the United States.

A.5 *Arizona v. California* 1964 Supreme Court Decree (Decree)

In 1964, the Supreme Court of the United States entered its Decree in *Arizona v. California* (376 U.S. 340), and supplemental Decrees were entered in 1979 (439 U.S. 419), 1984 (466 U.S. 144), and 2000 (531 U.S. 1). In accordance with the BCPA, and after providing that water may be released to satisfy the 1944 Water Treaty, the Decree apportioned water available for release from Colorado River water controlled by the United States for use in the states of Arizona, California, and Nevada. The Decree also

recognized certain Federal reserved rights and provided a process for the quantification of all claimed PPRs, all to be supplied from the existing apportionments of the respective states. In the context of Colorado River water, as set forth in the Decree, the term “PPRs” refers to water rights based upon diversion and beneficial use prior to the effective date of the BCPA (June 25, 1929).¹ A Federal reserved right PPR for an Indian reservation does not need to be diverted or put to beneficial use to be established or preserved but remains reserved for that reservation as of the date of creation of the reservation. All PPRs are numbered, and their relative priorities are set forth within the supplemental Decree entered January 9, 1979, although some of the Federal reserved right PPRs have been further modified by the supplemental Decrees entered in 1979, 1984, and 2000. The Federal reserved right PPRs identified in Article II(D)(1)–(5) of the Decree have the highest priority and are identified in the 1979 supplemental Decree as numbers 1–3, 22–25, and 81. The miscellaneous PPRs identified in the 1979 supplemental decree as numbers 7–21 and 29–80 have the next highest priority. After Federal and miscellaneous PPRs are satisfied, the next category of water rights to be satisfied are the PPRs for water projects and water districts, which are identified in the 1979 supplemental decree as numbers 4–6, 26–28, and 82.

The Decree enjoins the Secretary from releasing or delivering water other than to water users in the United States with valid contracts made pursuant to section 5 of the BCPA or to specified Federal reservations. The Decree provides the parameters for delivering water in “normal,” “surplus,” and “shortage” years. Annual determinations of normal and surplus conditions by the Secretary are based upon the applicable provisions of the Interim Surplus Guidelines, during the Guidelines’ effective period (2001–2016).

The Decree directs the Secretary to release 4.4 maf of mainstream water controlled by the United States to California in a normal year. In addition to the normal year allocation, in a surplus year as determined by the Secretary, the Secretary shall apportion 50% of the water in excess of 7.5 maf for use in California. In a shortage year, the Secretary must first satisfy all of the PPRs pursuant to the 1964 Decree and subsequent Decrees. The Secretary must then apportion the remaining water consistent with the BCPA and the Decree, but in no event shall more than 4.4 maf be apportioned for use in California, including use by all PPRs. The Decree also provides that Colorado River water apportioned to a Lower Division state, but not used by that state, may be made available to another Lower Division state (unused apportionment). California, therefore, has historically been allowed to divert water that was apportioned to, but not used by, Arizona and Nevada.

A.6 Colorado River Basin Project Act of 1968

The Colorado River Basin Project Act of 1968 (CRBPA) authorized construction of a number of water development projects, including the Central Arizona Project and required the Secretary to develop the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs, and prepare an annual plan of operations for Colorado River reservoirs.

¹ Federal Reserved Rights do not require diversion and use to be considered valid water rights under the concepts embodied in the Federal Reserved Rights Doctrine.

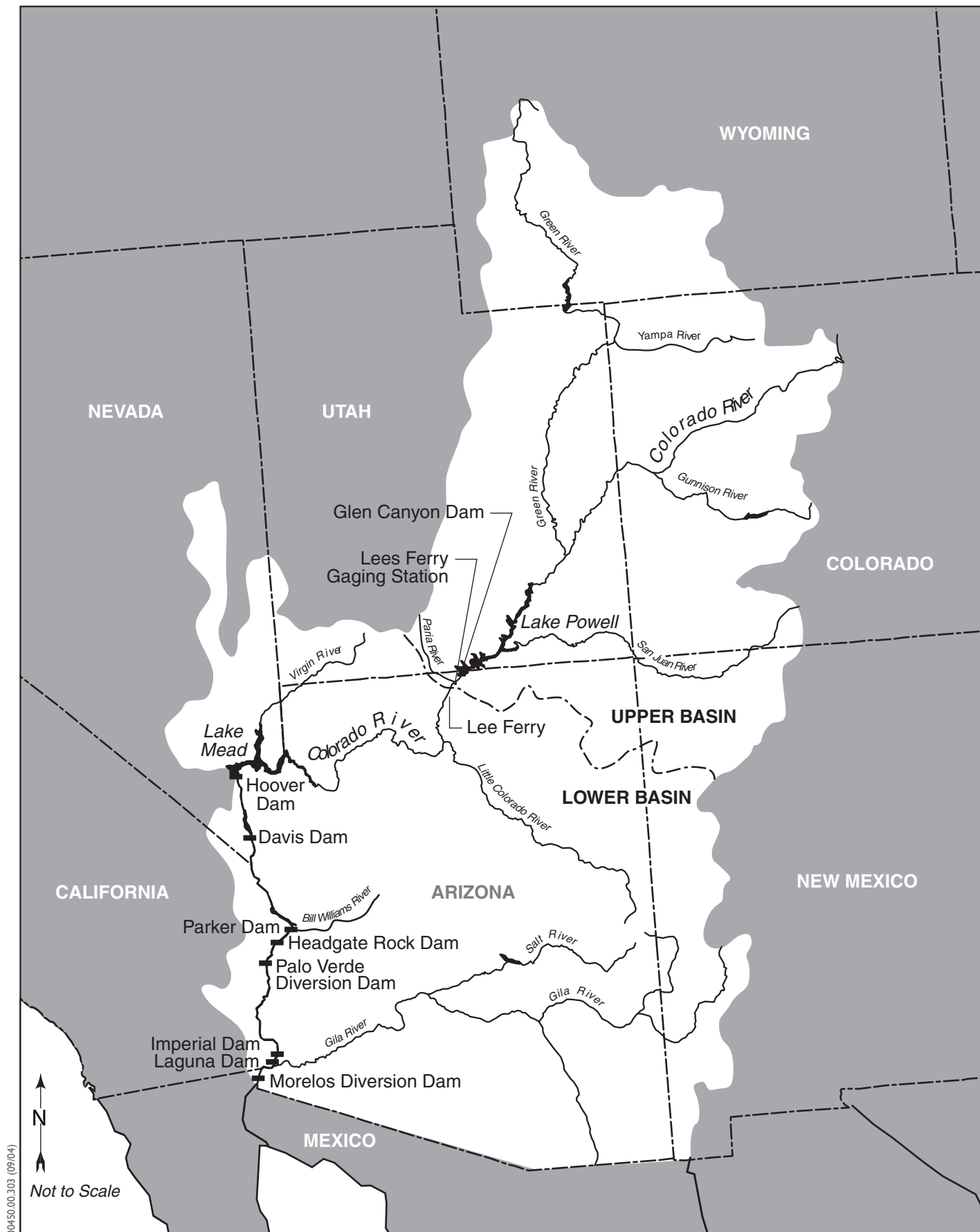


Figure A-1
Upper and Lower Basins of the Colorado River